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Joseph A. Spetrini  
Acting Assistant Secretary for Import Administration  
Attention: Import Administration  
Central Records Unit, Room 1870  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Inquiry into the Status of Ukraine as a Non-Market Economy  
Country for Purposes of the Antidumping Law

Dear Acting Assistant Secretary Spetrini:

On behalf of the American Iron and Steel Institute and pursuant to the Department's request for comments in the above-referenced inquiry, we hereby submit rebuttal comments on the issue of whether Ukraine should continue to be treated as a non-market economy country for purposes of the antidumping law.

Thank you for your attention to this matter.

Respectfully submitted,

*Barry D. Solary*

cc: Lawrence Norton  
Shauna Lee-Alaia

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BEFORE THE  
UNITED STATES DEPARTMENT OF COMMERCE  
INTERNATIONAL TRADE ADMINISTRATION

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**REBUTTAL COMMENTS REGARDING  
THE NON-MARKET ECONOMY  
STATUS OF UKRAINE**

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August 31, 2005

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THE DEPARTMENT SHOULD REJECT THE COMMENTS SUBMITTED IN SUPPORT OF THE REVOCATION OF UKRAINE'S NME STATUS .....	2
III.	THE DEPARTMENT SHOULD REJECT THE GOU'S CONTENTIONS REGARDING THE CONVERTIBILITY OF ITS CURRENCY .....	5
IV.	THE GOU HAS NOT SHOWN THAT WAGE RATES IN UKRAINE ARE DETERMINED BY FREE BARGAINING BETWEEN LABOR AND MANAGEMENT .....	7
V.	THE GOU'S CLAIMS REGARDING FOREIGN DIRECT INVESTMENT ARE DEVOID OF MERIT .....	10
VI.	THE GOU'S OWN COMMENTS SHOW THAT IT CONTINUES TO EXERCISE SUBSTANTIAL CONTROL OVER THE MEANS OF PRODUCTION IN UKRAINE.....	13
VII.	THE GOU'S CONTENTIONS REGARDING ITS LIMITED CONTROL OVER BUSINESS ACTIVITIES AND PRICING DECISIONS IN UKRAINE ARE REFUTED BY THE FACTS.....	17
VIII.	THE OTHER FACTORS RAISED BY THE GOU DO NOT PROVIDE ANY BASIS TO FIND THAT UKRAINE IS A MARKET ECONOMY COUNTRY .....	20
IX.	CONCLUSION.....	22

## LIST OF EXHIBITS

<u>Exhibit</u>	<u>Document</u>
1	"Strategy for Ukraine 2005-2007," <u>European Bank for Reconstruction and Development</u> (May 17, 2005), available at <a href="http://www.ebrd.com/about/strategy/country/ukraine/strategy.pdf">http://www.ebrd.com/about/strategy/country/ukraine/strategy.pdf</a>
2	"Wage Arrears by Region, 2005," State Statistics Committee of Ukraine Website, available at <a href="http://www.ukrstat.gov.ua/">http://www.ukrstat.gov.ua/</a> (last visited July 28, 2005)
3	"Transition Report Update," <u>European Bank for Reconstruction and Development</u> (May 2005)
4	"Transition Report 2004 – Infrastructure," <u>European Bank for Reconstruction and Development</u> (Oct. 2004)
5	"Ukraine Economy: Stuck on the Threshold of the WTO?," <u>EIU ViewsWire</u> (July 26, 2005)
6	"Transparency International Corruption Perceptions Index 2004," <u>Transparency International</u> , available at <a href="http://www.transparency.org/cpi/2004/cpi2004.en.html">http://www.transparency.org/cpi/2004/cpi2004.en.html</a> (last visited Aug. 5, 2005)

## I. INTRODUCTION

The American Iron and Steel Institute ("AISI"), on behalf of its U.S. member companies, hereby submits rebuttal comments on the issue of whether Ukraine should continue to be treated as a non-market economy ("NME") country for purposes of the antidumping law. Section 771(18)(B) of the Tariff Act of 1930, as amended (the "Act"), requires the Department to examine six factors to determine whether an NME country has completed the transition to a market economy. These factors are:

- (i) the extent to which the currency of the foreign country is convertible into the currency of other countries;
- (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management;
- (iii) the extent to which joint ventures or other investments by firms of other countries are permitted in the foreign country;
- (iv) the extent of government ownership or control of the means of production;
- (v) the extent of government control over the allocation of resources and over the price and output decisions of such enterprises; and
- (vi) such other factors as . . . {the Department} considers appropriate.<sup>1</sup>

The Western NIS Enterprise Fund, Alticor Inc. ("Alticor"), and the Government of Ukraine (the "GOU") have submitted comments in support of the revocation of Ukraine's NME status.<sup>2</sup> However, these comments fail to show that Ukraine has satisfied any of

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<sup>1</sup> 19 U.S.C. § 1677(18)(B) (2000).

<sup>2</sup> See Letter from Western NIS Enterprise Fund to the Department (June 3, 2005) ("Western NIS Enterprise Fund Letter") at 1 (Public Document); Letter from Alticor Inc. to the Department (July 11, 2005) ("Alticor Letter") at 1 (Public Document); Comments Submitted by Ministry of Economy of Ukraine Regarding Information on Market Status of Economy of Ukraine in the Context of U.S. Antidumping Legislation (May 10, 2005) ("GOU Comments") (Public Document). The English translation of the GOU's comments to the Department was not

the requirements necessary for it to be considered a market economy. To the contrary, a consideration of the six statutory factors under Section 771(18)(B) of the Act conclusively shows that Ukraine remains an NME country.

## **II. THE DEPARTMENT SHOULD REJECT THE COMMENTS SUBMITTED IN SUPPORT OF THE REVOCATION OF UKRAINE'S NME STATUS**

At the outset, the Department should reject the comments submitted in support of the revocation of Ukraine's NME status. Each of these submissions fails to satisfy the basic requirements established by the statute and the Department to be considered as part of the Department's NME analysis.

Specifically, the one-page letters from the Western NIS Enterprise Fund and Alticor do not even attempt to address any of the six statutory factors that the Department is required to consider in its NME analysis under Section 771(18)(B) of the Act.<sup>3</sup> On their face, these letters are plainly deficient and should not be considered by the Department.

The comments submitted by the GOU should also be rejected in their entirety. The GOU has failed to provide any citations or actual source documentation for the data upon which it relies throughout its comments or for any of the other information contained in the comments. The GOU's failure to provide such citations and source

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paginated. For the convenience of the Department, AISI treats the page immediately after the cover page (i.e., the page starting with the heading "Level of Convertibility of the National Currency") as page 1 and treats the pages thereafter as having been numbered consecutively.

<sup>3</sup> See Western NIS Enterprise Fund Letter at 1 (Public Document); Alticor Letter at 1 (Public Document).

documentation precludes the Department and commenters other than the GOU from analyzing the accuracy and reliability of the data and information in question.

For example, the GOU asserts that "the status of the Ukrainian currency as a hard currency for current transactions is proved by reports of the EBRD experts."<sup>4</sup> However, the GOU has failed to provide either copies of the reports in question or a citation for the reports. As a result, it is impossible to verify the accuracy of the GOU's contention or to determine basic background information regarding the alleged reports that would enable the Department and the other commenters to determine their reliability for purposes of the Department's analysis.

Moreover, in discussing the level of intervention by the National Bank of Ukraine (the "NBU") in the foreign exchange market for Ukraine's currency, the GOU makes various assertions regarding the volume of currency purchase and sale transactions.<sup>5</sup> Once again, however, the source for the data referenced in these assertions is not provided. Indeed, the GOU's comments contain extensive tables of data regarding items such as minimum wages, wage growth, and foreign direct investment in Ukraine without providing a single citation or any source documentation in support thereof.<sup>6</sup>

Furthermore, in its comments, the GOU refers to no less than 29 different laws and at least 25 other codes and regulations. However, the GOU has failed even to provide the original Ukrainian versions of these laws, codes, and regulations, let alone

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<sup>4</sup> GOU Comments at 1 (Public Document).

<sup>5</sup> Id. at 4.

<sup>6</sup> See, e.g., id. at 8-12, 16-17.

English translations of such documents.<sup>7</sup> Without a copy of these laws, codes, and regulations, the Department and other commenters cannot verify the accuracy of the assertions made by the GOU regarding their content or determine their relevance to the issues before the Department. In its request for comments in this matter, the Department specifically instructed commenters to include as exhibits or appendices any supporting documentation relevant to the information contained in the comments.<sup>8</sup> Clearly, the GOU has not complied with the requirements set forth in the Department's request for comments.

The complete lack of citations and source documentation for all of the data and information discussed and relied upon in the GOU's comments renders those comments wholly unacceptable. As such, the GOU's comments should be rejected by the Department.

But even assuming, *arguendo*, that the Department considers the GOU's comments as part of its NME analysis, those comments fail to show that Ukraine has made sufficient progress with respect to any of the six statutory factors under Section 771(18)(B) of the Act to be granted market economy status. AISI addresses the GOU's contentions with respect to each of the statutory factors in question in the sections that follow.

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<sup>7</sup> See *id.* at 3-4, 6-8, 14-15, 17-23, 25, 28, 31.

<sup>8</sup> Initiation of a Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine, 70 Fed. Reg. 21396 (Dep't Commerce Apr. 26, 2005) (initiation and request for comments); Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine, 70 Fed. Reg. 34744 (Dep't Commerce June 15, 2005) (extension of comment period).



### III. THE DEPARTMENT SHOULD REJECT THE GOU'S CONTENTIONS REGARDING THE CONVERTIBILITY OF ITS CURRENCY

The GOU argues that the currency of Ukraine, the hryvnya, meets the convertibility standard required by Section 771(18)(B) of the Act. However, the GOU's contentions in this regard are devoid of merit and must be rejected.

The Department has previously determined that there are significant limitations on the convertibility of the hryvnya. Indeed, in its 1997 determination to continue to treat Ukraine as an NME country, the Department found that the hryvnya is not convertible outside the Newly Independent States.<sup>9</sup> There is no indication in the GOU's comments or elsewhere that this lack of convertibility of the hryvnya has been remedied.

In addition, the GOU continues to maintain a *de facto* peg of the hryvnya against the U.S. dollar.<sup>10</sup> The GOU itself acknowledges in its comments to the Department that "{f}rom March 19, 1999, the official exchange rate of the hryvna to the U.S. dollar is fixed in accordance with the information on the market rates of the interbank exchange market."<sup>11</sup> Moreover, the GOU states that since March 2003, it has imposed "the requirement not to exceed 5% limit of deviation of a hryvna rate to foreign currencies

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<sup>9</sup> Certain Cut-to-Length Carbon Steel Plate From Ukraine, 62 Fed. Reg. 61754, 61755 (Dep't Commerce Nov. 19, 1997) (final determ.) ("1997 Determination").

<sup>10</sup> See "IMF Executive Board Concludes 2004 Article IV Consultation with Ukraine," International Monetary Fund (Jan. 24, 2005) ("IMF Report"), at 3-4, attached as Exhibit 5 to Comments Submitted by the American Iron and Steel Institute Regarding the Non-Market Economy Status of Ukraine (July 11, 2005) ("AISI Comments") (Public Document).

<sup>11</sup> GOU Comments at 1 (Public Document) (emphasis added).

rates from the official rate . . . ."<sup>12</sup> In other words, according to the GOU itself, the value of the hryvnya is restricted to a 5% range relative to other foreign currencies.

Ukraine's central bank, the NBU, has intervened significantly in the foreign exchange market in order to maintain a fixed exchange rate for the hryvnya.<sup>13</sup> Although the new government in Ukraine recently began discussions with the NBU over the future of monetary and exchange rate policy in the country, it is unclear whether this represents a move towards greater exchange rate flexibility.<sup>14</sup> In fact, as the European Bank for Reconstruction and Development (the "EBRD") recently found, "greater exchange rate flexibility will almost certainly require the removal of some restrictions in the foreign exchange market."<sup>15</sup>

Thus, by the GOU's own admission and as determined by authoritative, independent observers, Ukraine's currency is not reflective of market forces and is not fully convertible. As such, Ukraine has not satisfied this requirement to be treated as a market economy.

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<sup>12</sup> Id. at 2.

<sup>13</sup> IMF Report at 3-4, attached as Exhibit 5 to AISI Comments (Public Document); "Strategy for Ukraine 2005-2007," European Bank for Reconstruction and Development (May 17, 2005), available at <http://www.ebrd.com/about/strategy/country/ukraine/strategy.pdf> ("EBRD Report on Strategy for Ukraine"), at 54, attached hereto as Exhibit 1.

<sup>14</sup> EBRD Report on Strategy for Ukraine at 54, attached hereto as Exhibit 1.

<sup>15</sup> Id. (emphasis added).

#### **IV. THE GOU HAS NOT SHOWN THAT WAGE RATES IN UKRAINE ARE DETERMINED BY FREE BARGAINING BETWEEN LABOR AND MANAGEMENT**

The GOU has attempted to portray the labor market in Ukraine as a free market with freely negotiated wages. The GOU's claims in this regard are based on three factors: (1) the existence of laws in Ukraine that provide for the protection of workers rights; (2) the existence of a minimum wage and the growth in average monthly wages in Ukraine; and (3) the decline in wage arrears in the country. However, none of these factors provides support for the GOU's claims.

First, the GOU argues that Ukraine has laws in place to protect the rights of workers and guarantee their right to strike, join trade unions, and participate in collective bargaining.<sup>16</sup> The mere existence of such laws does not mean that the rights that they are designed to protect are respected in practice, however. In fact, those rights are not respected in practice in Ukraine. The GOU uses a registration requirement to delay and deny the formation of unions in Ukraine.<sup>17</sup> In addition, workers attempting to exercise their labor union rights are often harassed and subject to discrimination.<sup>18</sup> In particular, the International Labor Organization has found that trade union members are frequently threatened and intimidated, forced to leave the union, and suffer other adverse

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<sup>16</sup> See GOU Comments at 6 (Public Document).

<sup>17</sup> See "Ukraine: Country Reports on Human Rights Practices – 2004," Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State (Feb. 28, 2005) ("State Dept. Report on Human Rights"), at 24-25, attached as Exhibit 11 to AISI Comments (Public Document).

<sup>18</sup> Id. at 25; "Ukraine: Annual Survey of Violations of Trade Union Rights (2004)," International Labor Organization ("Annual Survey of Trade Union Right Violations"), at 2, attached as Exhibit 8 to AISI Comments (Public Document)

consequences with respect to their employment as a result of their union membership.<sup>19</sup> Such an environment clearly impedes the ability of workers to organize and bargain collectively and impedes the establishment of market-based wages.

The GOU next relies on the presence of a minimum wage and the purported growth in average monthly wages in Ukraine.<sup>20</sup> However, this information provides no proof that wages are determined in a free and open market and are freely negotiated. To the contrary, wages in Ukraine are strictly regulated by the government at the state, branch, regional, and industrial levels.<sup>21</sup> Indeed, the GOU itself acknowledges that the so-called "Tariff Rate System" established by the Law on Remuneration of Labor "is used to fix wage levels and differentiate wage rates by profession, qualification and position."<sup>22</sup> In its 1997 decision to continue to treat Ukraine as an NME, the Department relied on the presence of the "Tariff Rate System" in finding that the GOU is "heavily involved" in setting wage rates and in other employment-related issues.<sup>23</sup> Nothing has changed, and the GOU continues to exercise significant control over wage rates and other employment-related issues through the "Tariff Rate System."<sup>24</sup>

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<sup>19</sup> Annual Survey of Trade Union Right Violations at 2, attached as Exhibit 8 to AISI Comments (Public Document).

<sup>20</sup> GOU Comments at 8-12 (Public Document).

<sup>21</sup> Id. at 7.

<sup>22</sup> Id. (emphasis added).

<sup>23</sup> 1997 Determination, 62 Fed. Reg. at 61755.

<sup>24</sup> It should be noted that the variation in average monthly wages reported by the GOU by industry sector and region is not a reflection of market determined wages. See GOU Comments at 8-12 (Public Document). Indeed, the GOU has not even claimed that this is the case. Rather, the variation in wages is the direct result of the operation of the "Tariff Rate System." See id. at 7.

The GOU further contends that there has been "a steady decrease" in the level of wage arrears and that wage arrears are no longer a problem in Ukraine.<sup>25</sup> However, this contention simply does not comport with the facts. Indeed, the State Statistics Committee of Ukraine reports that wage arrears actually rose from 1.11 billion hryvnyas to 1.34 billion hryvnyas from January 2005 through July 2005, an increase of 20.7% in that 7 month period alone.<sup>26</sup> This demonstrates not only that wage arrears continue to be a significant problem in Ukraine, but also that they are increasing, rather than decreasing, in severity.

Finally, the GOU has not even attempted to address the severe restrictions on Ukrainian workers' freedom of movement. Workers in Ukraine are still required to register their residence, and all social benefits are tied to their residence. In other words, workers can lose all such benefits upon moving.<sup>27</sup> Thus, Ukrainian workers certainly are not free to move about the country and there is little or no labor mobility.

Contrary to the contentions by the GOU, Ukraine does not have a free labor market and labor conditions remain poor in the country. This factor once again shows that Ukraine is not entitled to market economy status.

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<sup>25</sup> Id. at 12-13.

<sup>26</sup> See "Wage Arrears by Region, 2005," State Statistics Committee of Ukraine Website, available at <http://www.ukrstat.gov.ua/> (last visited July 28, 2005), attached hereto as Exhibit 2. The 20.7% figure above is calculated as follows: 1.3413 billion hryvnyas – 1.1112 billion hryvnyas = 0.2301 billion hryvnyas; 0.2301 billion hryvnyas ÷ 1.1112 billion hryvnyas = 0.207; 0.207 x 100 = 20.7%.

<sup>27</sup> "Encyclopedia: Propiska," Nationmaster, available at <http://www.nationmaster.com/encyclopedia/Propiska> (last visited May 21, 2005), attached as Exhibit 7 to AISI Comments (Public Document).

## V. THE GOU'S CLAIMS REGARDING FOREIGN DIRECT INVESTMENT ARE DEVOID OF MERIT

The GOU contends that Ukraine is a highly attractive target for foreign direct investment. According to the GOU, "Ukraine has certain advantages for investors, namely: its geopolitical location, capacious consumer market, skilled and cheap labour, presence of basic industrial infrastructure, presence of attractive objects for privatization, great potential for economic growth – all these components together enable increase of investments."<sup>28</sup> However, there is one fundamental and overriding problem with the GOU's argument – despite all of these purported advantages for investors, the fact remains that foreign direct investment continues to be extremely low in Ukraine.

Indeed, the per capita amount of foreign direct investment in Ukraine is low both when considered on its own and in relation to other countries in the region. Specifically, among the 12 countries comprising the Commonwealth of Independent States, Ukraine's per capita foreign direct investment was lower than all but 4 countries.<sup>29</sup> Moreover, Ukraine's per capita foreign direct investment is substantially lower than all of the countries in central eastern Europe and the Baltic states.<sup>30</sup>

The low foreign direct investment in Ukraine is due to the extensive formal and informal barriers to investment in that country.<sup>31</sup> Despite the GOU's contention to the

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<sup>28</sup> GOU Comments at 14 (Public Document).

<sup>29</sup> See "Transition Report Update," European Bank for Reconstruction and Development (May 2005) ("EBRD Transition Report Update"), at 19, Table A7, attached hereto as Exhibit 3 (showing cumulative FDI inflows per capita for the period 1989-2004).

<sup>30</sup> Id.

<sup>31</sup> See AISI Comments at 16-20 (Public Document).

contrary,<sup>32</sup> the numerous laws and codes cited as having been revised, modified, or updated will only add to, rather than alleviate, the barriers to investment. These changes reflect a lack of certainty, stability, and predictability in the legal landscape that is necessary to attract foreign investors and sustain a market economy. In addition, the sheer number of laws and codes now governing foreign investment activities in Ukraine provides the significant potential for further government interference and control as well as burdensome procedures that will severely limit the attractiveness of Ukraine as an investment opportunity.

The GOU also argues that foreign investments are protected from nationalization and that, to the extent disputes occur, they can be "appealed in court."<sup>33</sup> As a practical matter, however, the Ukrainian legal system simply cannot be relied upon to protect investors' rights. The legal system suffers from enormous problems such as burdensome procedures, unpredictability, political interference, and corruption.<sup>34</sup> The rule of law is poorly developed in Ukraine, and dispute settlement is weak.<sup>35</sup> Indeed, favorable judicial or arbitration decisions are often unenforceable.<sup>36</sup> Not surprisingly, based on these

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<sup>32</sup> See GOU Comments at 14 (Public Document).

<sup>33</sup> Id.

<sup>34</sup> "Doing Business in Ukraine: A Country Commercial Guide for U.S. Companies," U.S. & Foreign Commercial Service and U.S. Department of State (2004) ("Ukraine Country Commercial Guide") at Chapter 6: Investment Climate -- Dispute Settlement, pp. 6-4 to 6-5, attached as Exhibit 12 to AISI Comments (Public Document).

<sup>35</sup> Id.

<sup>36</sup> Id.

serious problems, foreign investors have little confidence in the Ukrainian legal system.<sup>37</sup>

In turn, this environment simply is not attractive to new foreign investors.

The GOU's discussion of anecdotal information regarding the participation of foreign investors in the privatization of a handful of companies in Ukraine is also completely unavailing.<sup>38</sup> This anecdotal information cannot change the fact that the overall level of foreign direct investment in Ukraine is abysmally low.<sup>39</sup> In fact, the number of enterprises with 100% foreign ownership in Ukraine is miniscule and actually decreased from 2001 to 2004.<sup>40</sup>

Lastly, despite the GOU's contentions to the contrary, the level of foreign participation in certain industries continues to be restricted. Although the GOU emphasizes the fact that "a portion of foreign investments in a statute fund of news agencies was increased from 30 to 35%,"<sup>41</sup> this represents a minimal increase in the level of allowable foreign investment in a limited segment of the economy. Furthermore, while the GOU asserts that the Amendments to the Law on Communication "helped to remove some restrictions concerning a portion of foreign capital in a statute fund of joint-

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<sup>37</sup> Id. at Chapter 6: Investment Climate – Openness to Foreign Investment, p. 6-1.

<sup>38</sup> See GOU Comments at 15 (Public Document).

<sup>39</sup> See EBRD Transition Report Update at 19, Table A7, attached hereto as Exhibit 3; Ukraine Country Commercial Guide at Chapter 6: Investment Climate – Foreign Direct Investment, p. 6-15, attached as Exhibit 12 to AISI Comments (Public Document); "Country Report – Ukraine," Economist Intelligence Unit (Apr. 2005), at 35, attached as Exhibit 4 to AISI Comments (Public Document).

<sup>40</sup> "Ukraine 2003," State Statistics Committee of Ukraine, available at [www.ukrstat.gov.ua](http://www.ukrstat.gov.ua) (last visited May 22, 2005), at 56, attached as Exhibit 15 to AISI Comments (Public Document).

<sup>41</sup> GOU Comments at 15 (Public Document).



stock communication and broadcasting companies,"<sup>42</sup> these represent marginal improvements made more than 5 years ago. Clearly, the GOU has done precious little to improve the level of foreign participation and investment in sectors in which it is currently limited.<sup>43</sup>

In sum, the Ukraine must make dramatic improvements in order to increase the level of foreign direct investment. Based on this factor as well, whether considered on its own or together with the other factors discussed herein, Ukraine has not satisfied the requirements to be considered a market economy.

## **VI. THE GOU'S OWN COMMENTS SHOW THAT IT CONTINUES TO EXERCISE SUBSTANTIAL CONTROL OVER THE MEANS OF PRODUCTION IN UKRAINE**

The GOU appears to argue that government control over the means of production in Ukraine is limited. However, the information contained in its own submission shows to the contrary.

The GOU first asserts that the private sector has accounted for 65% of the gross domestic product ("GDP") in Ukraine since 2002.<sup>44</sup> This necessarily means that the public sector has accounted for 35% of GDP over the same period – a substantial portion of total GDP by any measure. Additionally, a May 2005 report from the EBRD shows that the share of GDP accounted for by the public sector in Ukraine actually grew from

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<sup>42</sup> Id. (emphasis added).

<sup>43</sup> See Ukraine Country Commercial Guide at Chapter 6: Investment Climate – Openness to Foreign Investment, p. 6-2, attached as Exhibit 12 to AISI Comments (Public Document).

<sup>44</sup> GOU Comments at 19 (Public Document).

34.1% in 1999 to 37.7% in 2003.<sup>45</sup> Thus, not only is the public sector's share of GDP substantial, but it is growing.<sup>46</sup>

The GOU next touts the number of entities privatized in Ukraine as a reflection of a purportedly significant reduction in the level of state control over production.<sup>47</sup> However, the facts show otherwise. There are serious problems with the privatization program in Ukraine, and that program may actually be regressing rather than progressing. Ukrainian President Viktor Yushchenko has appointed a critic of privatization to head the agency responsible for administering the privatization program.<sup>48</sup> Moreover, the legality of numerous privatizations that have been conducted in Ukraine remains questionable, and this has raised concerns regarding the re-nationalization of the companies involved.<sup>49</sup>

The GOU's listing of a few foreign companies that have participated in the privatization process in Ukraine provides no support for its contentions on this issue and, in fact, is indicative of the limited impact that the privatization program has had in returning economic activity to the private sector.<sup>50</sup> Specifically, none of the foreign

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<sup>45</sup> See EBRD Transition Report Update at 75, attached hereto as Exhibit 3 (showing general government expenditure as percent of GDP).

<sup>46</sup> Data from the EBRD's May 2005 report also show that the rate of growth in public consumption exceeds the rate of growth in private consumption in Ukraine. Specifically, while private consumption increased by 12.1% in 2003, public consumption grew at an even greater rate of 14.8% in that same year. Id.

<sup>47</sup> See GOU Comments at 19-20 (Public Document).

<sup>48</sup> "Ukrainian Politics: Investors Remain Cautious," Financial Times (May 13, 2005), available at <http://www.firstnews.com.ua/en/industry/industry.html?id=49824>, at 2, attached as Exhibit 19 to AISI Comments (Public Document).

<sup>49</sup> See id.

<sup>50</sup> See GOU Comments at 20 (Public Document).

investors listed by the GOU was able to purchase 100% of the Ukrainian entities at issue.<sup>51</sup> Thus, while these examples may "count" in the number of privatizations that have taken place, the government has not relinquished full control over the entities. In fact, a report by Pricewaterhouse Coopers has found that the GOU simply has given up "majority ownership" in 90% of the enterprises privatized since 1991.<sup>52</sup> Furthermore, none of the privatizations listed by the GOU occurred after 2003.<sup>53</sup> In other words, it appears that there has been little or no major foreign investment recently. This is not evidence of a country that is entitled to market economy status. Significantly, a total of 69% of Ukraine's economic entities remain either directly or indirectly controlled by the government.<sup>54</sup>

In yet another attempt to show the reduced involvement of the government in Ukraine's economic affairs, the GOU contends that private land ownership has increased and that there is less government control over land.<sup>55</sup> Again, the facts do not support such a conclusion.

The GOU relies heavily on its claim that private entities currently own 50.6% of all land in Ukraine.<sup>56</sup> However, this reliance by the GOU is misplaced for three reasons.

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<sup>51</sup> Id.

<sup>52</sup> See "Privatisation," Pricewaterhouse Coopers, available at <http://www.pwc.com> (last visited May 22, 2005), at 2, attached as Exhibit 16 to AISI Comments (Public Document).

<sup>53</sup> See GOU Comments at 20 (Public Document).

<sup>54</sup> See AISI Comments at 23 (Public Document).

<sup>55</sup> See GOU Comments at 21 (Public Document).

<sup>56</sup> Id.

First, this necessarily means that the government continues to own 49.4%, or virtually half, of all land in Ukraine. Thus, government ownership and control over the land remains substantial. Second, this situation is unlikely to change in the near future, if at all. According to the GOU itself, the rate of private land ownership has increased only 1.2 percentage points over the last three and a half years – i.e., from 49.4% on January 1, 2002 to 50.6% currently.<sup>57</sup> Clearly, there has only been a minimal effort, at best, to increase the level of private land ownership. And third, even with respect to the 50.6% of the land that is in private hands, the GOU has imposed strict controls over how it is allocated. The GOU has described a system for land allocation whereby it issues "certificates for the right to a land share" to a certain group of people and "state acts for the right to land property" to a subset of this group.<sup>58</sup> This is the epitome of strict government control over land ownership.

Finally, the GOU makes certain assertions regarding its bankruptcy laws and the administration of those laws.<sup>59</sup> However, it fails to show the relevance of any of this information to the Department's NME analysis. But even assuming that this information is relevant here, the EBRD has assigned Ukraine a score of "very low" in its compliance with international insolvency standards.<sup>60</sup> According to the EBRD, countries with this "very low" compliance rating "have functioning insolvency legislation, but it is rudimentary and severely deficient in all core areas. Their laws complicate the initial

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<sup>57</sup> See id.

<sup>58</sup> Id.

<sup>59</sup> See id.

<sup>60</sup> "Transition Report 2004 – Infrastructure," European Bank for Reconstruction and Development (Oct. 2004), at 18, Table A.1.1.1, attached hereto as Exhibit 4.

filing process, either through unclear and inadequate criteria for the commencement of proceedings or through time consuming procedural requirements (such as employee consultations in Ukraine)."<sup>61</sup> Moreover, such a score indicates that Ukraine has "inadequate legal provisions regarding the qualifications of insolvency administrators, cross-border insolvencies and the avoidance of pre-bankruptcy transactions."<sup>62</sup> In other words, this is yet another reflection of the inferior legal infrastructure present in Ukraine.

As established above, the GOU continues to exercise substantial control over the means of production. For this reason as well, Ukraine is not entitled to be treated as a market economy.

**VII. THE GOU'S CONTENTIONS REGARDING ITS LIMITED CONTROL OVER BUSINESS ACTIVITIES AND PRICING DECISIONS IN UKRAINE ARE REFUTED BY THE FACTS**

The GOU contends that government restrictions on business activities in Ukraine are insignificant<sup>63</sup> and that prices are set in the country without government interference.<sup>64</sup> Each of these contentions is refuted by the facts and must be summarily rejected.

With respect to the restrictions on business activities, the GOU itself reports that the Commercial Code of Ukraine regulates economic activity in the country.<sup>65</sup> Several independent observers have raised grave concerns regarding the operation of the

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<sup>61</sup> Id. at 18.

<sup>62</sup> Id.

<sup>63</sup> GOU Comments at 23 (Public Document).

<sup>64</sup> Id. at 25.

<sup>65</sup> See id. at 22.

Commercial Code. In particular, a roundtable studying business operations and investment in Ukraine under the auspices of the Organization for Economic Cooperation and Development (the "OECD") found that "the Commercial Code embodies concepts that simply do not work within a market economy."<sup>66</sup> The OECD-sponsored roundtable further concluded that the Commercial Code should be abolished due to its "decided tendency towards re-establishing a command economy, for example, its empowerment of the government to dictate the actions of companies and to deprive companies of various benefits and privileges when they do not comply with government demands."<sup>67</sup> The GOU's discussion of the role that the Commercial Code plays with respect to economic activity in Ukraine indicates that no improvement has been made regarding the concerns of the OECD.<sup>68</sup>

With respect to government control over pricing, the GOU makes the amazing claim that "m}ore than 90% of prices in Ukraine are fixed without interference of the state."<sup>69</sup> However, as the Department found in its 1997 determination on Ukraine's NME status, the Law on Prices and Pricing authorizes the GOU to set the prices on goods and

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<sup>66</sup> "Legal Issues with Regard to Business Operations and Investment in Ukraine," OECD (Oct. 2004), at 9, attached as Exhibit 13 to AISI Comments (Public Document) (emphasis added).

<sup>67</sup> Id. (emphasis added).

<sup>68</sup> GOU Comments at 22 (Public Document). The GOU's control over business activities in Ukraine is also underscored by the fact that, as established in Section VI above, the GOU continues to own virtually half of all land in Ukraine and to exercise strict control over the ownership of the remaining land. This gives the GOU control over the access to and use of land in Ukraine for the economic activities it deems most appropriate.

<sup>69</sup> Id. at 25. Once again, the GOU makes this claim without citing any support or authority therefor.

services that affect the entire economy.<sup>70</sup> According to the U.S. State Department, the GOU has exercised this authority by setting prices and tariffs with respect to electricity, telecommunications, transportation, utilities, and some crucial products such as sugar, grain, gas, and oil.<sup>71</sup> In fact, the GOU itself acknowledges that

{p}rices and tariffs for products and services which are subject to state regulation are as follows: economically and socially important goods and services and those produced or provided by natural and artificial monopolies (tariffs for public utilities and electric energy for individual consumption; prices for fuel and energy resources for individual consumption; tariffs for transportation etc.).<sup>72</sup>

Thus, by its own admission, the GOU has a direct role in setting prices throughout the economy.

Furthermore, it is important to reiterate that 69% of all economic entities in Ukraine are either directly or indirectly controlled by the government.<sup>73</sup> Such control gives the government the ability to heavily influence decisions regarding pricing and production in a wide range of economic sectors.

Based on the foregoing, the government continues to exert significant control over business activities and price and output decisions of enterprises. Until the government relinquishes this control over the economy, Ukraine cannot be considered a market economy country.

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<sup>70</sup> See 1997 Determination, 62 Fed. Reg. at 61756; Law of Ukraine of 03.12.1990 on Prices and Pricing, No. 507-XII (1990), attached as Exhibit 20 to AISI Comments (Public Document).

<sup>71</sup> Ukraine Country Commercial Guide at Chapter 3: Selling U.S. Products and Services – Pricing, p. 3-12, attached as Exhibit 12 to AISI Comments (Public Document).

<sup>72</sup> GOU Comments at 25 (Public Document).

<sup>73</sup> See AISI Comments at 23 (Public Document).

## **VIII. THE OTHER FACTORS RAISED BY THE GOU DO NOT PROVIDE ANY BASIS TO FIND THAT UKRAINE IS A MARKET ECONOMY COUNTRY**

The GOU relies heavily on three other factors in support of its claim for market economy status – *i.e.*, the level of economic growth in Ukraine, the country's efforts to accede to the WTO, and the efforts to combat corruption in the country. None of these three factors provides support for the treatment of Ukraine as a market economy country.

First, the recent growth in Ukraine's GDP is certainly commendable. However, it is not relevant to whether Ukraine should be treated as a market economy country. What is relevant and important is the share of GDP accounted for by the government or public sector because this reflects the level of government involvement in and control of the economy. For example, although China's GDP has shown significant growth, it certainly is not a market economy country. As demonstrated in Section VI above, the share of GDP accounted for by the public sector in Ukraine is substantial and has actually increased from 34.1% in 1999 to almost 38% in 2003. In addition, the rate of growth of government expenditures in the country exceeds that of private expenditures. The already substantial and growing government share of GDP should be treated by the Department as evidence that Ukraine is not entitled to treatment as a market economy.

Second, while progress has been made on Ukraine's accession to the WTO, this too is irrelevant to the Department's NME analysis. Once again, as the example of China vividly shows, a country need not be a market economy country to become a member of the WTO. In any event, significant issues remain to be resolved for Ukraine to accede to



the WTO and accession is far from certain.<sup>74</sup> Indeed, Ukraine must still complete bilateral negotiations with 13 members of its WTO working group, including the United States.<sup>75</sup> Moreover, political opposition within the GOU itself toward further reforms necessary for accession "remains considerable."<sup>76</sup> Resistance has come from various government factions, including those loyal to the previous government as well as from the Communist Party of Ukraine. This combination of forces "has so far succeeded in blocking a number of bills."<sup>77</sup> The ability of the government leadership to reach a consensus on the remaining issues will be critical for passage of the legislation required for WTO accession. Given the experience thus far, this will be difficult, if not impossible.<sup>78</sup> Furthermore, the ineffectiveness of President Yushchenko and his administration in getting the legislation in question passed has "fueled concerns over the future of its reform agenda more generally."<sup>79</sup>

Lastly, while Ukraine has made some positive strides in its effort to combat corruption, the level of corruption remains a significant concern for the country. The International Monetary Fund has recognized that corruption is "endemic" in Ukraine,<sup>80</sup>

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<sup>74</sup> See "Ukraine Economy: Stuck on the Threshold of the WTO?", EIU ViewsWire (July 26, 2005), at 1, attached hereto as Exhibit 5.

<sup>75</sup> Id.

<sup>76</sup> Id. at 2.

<sup>77</sup> Id.

<sup>78</sup> See id.

<sup>79</sup> Id. at 3.

<sup>80</sup> "IMF Survey," International Monetary Fund (Apr. 4, 2005), Vol. 34, No. 6, at 90, attached as Exhibit 22 to AISI Comments (Public Document).

and the U.S. State Department has found that corruption "pervades all levels of society and government and all spheres of economic activity in Ukraine."<sup>81</sup> Speaking to a group of potential investors in March 2005, the current Ukrainian Justice Minister, Roman Zvarych, frankly acknowledged that "our courts are corrupt. Our judges cannot be trusted. This is the simple truth."<sup>82</sup> In fact, Ukraine ranked 122 out of 146 countries in Transparency International's Corruption Perceptions Index for 2004.<sup>83</sup> Its score puts it in the category of countries with "rampant corruption."<sup>84</sup> Clearly, Ukraine has a long way to go in its fight against corruption in order to achieve market economy status.

## **IX. CONCLUSION**

As demonstrated above and in the opening comments submitted on behalf of AISI, Ukraine does not satisfy any of the conditions necessary to be treated as a market economy. Accordingly, the Department should continue to treat Ukraine as an NME country for purposes of the antidumping law.

Respectfully submitted,

*Barry D. Solary*

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<sup>81</sup> Ukraine Country Commercial Guide at Chapter 6: Investment Climate – Corruption, pp. 6-11 to 6-12, attached as Exhibit 12 to AISI Comments (Public Document).

<sup>82</sup> EBRD Report on Strategy for Ukraine at 50, attached hereto as Exhibit 1.

<sup>83</sup> "Transparency International Corruption Perceptions Index 2004," Transparency International, available at <http://www.transparency.org/cpi/2004/cpi2004.en.html> (last visited Aug. 5, 2005), at 5, attached hereto as Exhibit 6.

<sup>84</sup> See id. at 1.

# EXHIBIT 1

# **Strategy For Ukraine 2005-2007**

As approved by the Board of Directors on 17 May 2005

### *Rule of Law*

In accordance with its Constitution, in Ukraine “the principle of the rule of law is recognised and effective”. The conduct of the Supreme Court during the political crisis of November/December 2004 demonstrated that a separation of powers can function as intended and that the rule of law can be observed. However, there are still numerous cases where the independence of the judiciary and effective limits on the power of the State have come under question. The newly-elected authorities recognise this and have identified measures needed to strengthen the rule of law and combat abuses by corrupt judges and officials.

Speaking to an audience of potential investors in New York in March 2005, the current Ukrainian Justice Minister, Roman Zvarych, allowed that “our courts are corrupt. Our judges cannot be trusted. This is the simple truth”. Survey and anecdotal evidence supports this assessment. Similarly, administrative corruption and so-called “state capture” – which involves corruption at the highest levels, where the rules of the game are established – have reached some of the highest levels in the transition region according to the EBRD/World Bank Business Environment and Enterprise Performance Survey. According to Transparency International’s Corruption Perceptions Index (CPI) for 2004, Ukraine ranks 122<sup>nd</sup> out of 146 countries surveyed, fifth from the bottom among transition countries. With a CPI of 2.2 out of a possible 10 (where 10 is least corrupt), Ukraine’s score puts it in the category of countries with “rampant corruption” according to Transparency International.

It is necessary first of all to acknowledge and accept the scale of a problem before you reasonably expect to solve it, and the authorities in Ukraine appear ready to do this. In fact, their performance in office will be judged by the electorate largely on how effectively they can enforce the rule of law, bring down levels of corruption and dismantle the system of crony capitalism built up by their predecessors. The authorities have not thus far pursued an integrated, high profile anti-corruption programme. Such programmes in Ukraine (and elsewhere) have met with little success in the past. Instead, they are targeting areas where corruption has been a major problem – at the highest levels and the lower ones – and designing more discrete initiatives to tackle them. The rule of law/anti-corruption effort announced in the first few months of 2005 includes:

- Judicial reforms that will enhance transparency of judgements, facilitate dissemination of legal rulings, upgrade the technological capacity of the courts system and improve training and compensation for judges. There is also a need to tighten enforcement of judicial decisions, which will require better discipline in the executive branch as well as reforms of the bailiff system, law enforcement and the civil service.
- A strengthening of the Justice Ministry’s authority to initiate disciplinary procedures against judges found to have engaged in corrupt activities.
- A revival of the “Clean Hands” campaign by the Justice Ministry, which will involve pledges by Government officials at all levels to work honestly and transparently, with monitoring and sanctioning mechanisms to encourage full participation. The Justice Ministry is also drafting a “Civil Service Code” that will enforce greater public disclosure by officials and narrow the space for conflicts of interest.

## ANNEX 2 ECONOMIC DEVELOPMENTS AND PROSPECTS

**Recent Economic Developments:** The election of President Yushchenko and the appointment of a government committed to accelerating reform is the most significant development in Ukraine since independence in 1991. The new government has already provided a clear indication that EU accession, higher living standards for all, and improving the investment climate are its main priorities, to be achieved by faster and more consistent reforms

Nevertheless the Yanukovitch government achieved stronger than expected growth, not least in 2004 when a particularly favourable set of factors including stronger than expected demand from Russia, high prices for the major exports of metals and chemicals, and the continued growth of domestic demand resulted in GDP growth of 12 per cent – significantly higher than most initial estimates. On the supply side growth was broad based including from most industrial sectors, from agriculture following a good grain harvest and also from the continuing construction boom.

The positive contribution to growth from net trade meant that the external position remained very strong, reflected in large current account surpluses. In addition fiscal deficits remained low. However, NBU interventions in the foreign exchange market to ensure stability of the exchange rate resulted in continuing strong growth of the money supply. Although this was largely matched by the strong growth of demand for money, nevertheless inflation began to rise in 2004. The increase in inflation was because of higher food and oil prices in the first instance.

However, this broadly favourable scenario was seriously affected by the government's decision to ease fiscal policy in the second half of 2004 (which added to inflationary pressures) and then by the run on bank deposits in late 2004 when political uncertainty was at its height. Furthermore GDP growth slowed in early 2005 – to 5.4 per cent in the first three months of the year (yoy) as industrial output weakened, while inflation remained high (the CPI was 14.7 per cent in March (yoy) while the PPI remained over 20 per cent (yoy) in February).

**Monetary and Exchange Rate Policy:** Until April 2005, monetary policy was largely subservient to the policy of maintaining a de facto peg against the US dollar (at around HR5.3/US\$). The policy was very successful initially as providing a clear nominal anchor against inflation. However, the inherent inflationary nature of such a policy with large external surpluses, limited scope for sterilisation and the uncertainty over the strength of growth of money demand, has long been a concern.

In the early months of 2005 the new government began discussions with the NBU over the future of monetary/exchange rate policy. This resulted in an initial nominal appreciation of the exchange rate of about 5 per cent against the US dollar, although it remains unclear at present whether this represents a move towards greater exchange rate flexibility, perhaps combined with a gradual move towards inflation targeting.

Greater exchange rate flexibility will almost certainly require the removal of some restrictions in the foreign exchange market. Some preliminary steps have already been taken, including the removal of the 2 per cent corridor around the official exchange rate, introduced by the NBU last October when it was required to defend

the exchange rate. The NBU has also agreed to the removal of the 50 per cent surrender requirement of export receipts. Nevertheless the overall policy shift ought to give the NBU greater scope for controlling the growth of the money supply, even if it will require further work to assess the likely impact of interest changes on activity.

One important reason for permitting greater flexibility is the likelihood that the exchange rate will appreciate in real terms. Over the last couple of years the rate has fallen in real terms, mainly because of the sharp fall of the dollar against the Euro. The resulting undervalued exchange rate has provided a further boost to exports. Given the prospect of further external surpluses and higher capital inflows the exchange rate is likely to come under stronger upward pressures. Permitting some nominal appreciation appears the best way of dealing with these pressures. The impact on competitiveness is likely to be small in view of low wage levels.

Such a change of policy should have two broad impacts. Firstly it should contribute to lower inflation, assuming some fiscal tightening too, although the current rate of PPI inflation suggests that the decline in (CPI) inflation will be modest this year. Secondly external reserves are likely to grow, but less rapidly than before. Reserves had risen to some US\$ 12.5 billion by mid-September 2004 before falling by US\$ 3 billion in the final quarter on account of political uncertainty. Reserves have since recovered (to US\$ 11.9 billion by end-March), well in excess of three months of imports of goods and services, and should increase further during the remainder of the year.

**Fiscal Policy:** The Yanukovitch government raised spending in mid-2004 and then more than doubled the basic minimum pension from September 2004, at an annual cost of some UAH 13 billion (over 3 per cent of GDP). These decisions transformed an original projection for the fiscal deficit of 0.9 per cent of GDP for 2004 into an EBRD estimate of 3.4 per cent of GDP and resulted in a primary fiscal deficit of some 2.5 per cent of GDP. They also left the new government with a serious problem as to how to address these recurrent spending issues. Until then fiscal policy had been generally sound, with several years of low fiscal deficits and primary surpluses. The latter contributed to a steady decline in the ratio of public debt to GDP from 46 per cent in 2000 to 26 per cent in 2004.

There is, however, considerable uncertainty as to what the actual budget outcome was in 2004 (including the outstanding VAT arrears which are believed to be some HR7.5 billion). The IMF has estimated that the deficit was at least 4.5 per cent of GDP. However, on the published figures, with debt repayments estimated at some HR9 billion, financing requirements in 2004 were some UAH 20 billion, readily funded by higher than expected privatisation revenues and domestic and external borrowing.

The challenge in 2005 will be greater, partly because the government committed itself to implementing the pension increases, intends to meet its own campaign promises while tax revenues are unlikely to be as buoyant as in 2004. Towards the end of March the Rada approved the new government's state budget for 2005 with a deficit of just UAH 6.8 billion (1.6 per cent of GDP). This is to be achieved by valid and necessary measures including removing tax exemptions and increasing revenues as a result of improved management of state run enterprises. However, the budget is also based on optimistic revenue assumptions – an increase of about 30 per cent in total.

## EXHIBIT 2



# State Statistics Committee of Ukraine

Home Site map Government Portal  
 What's new?

Statistical information

Regions of Ukraine

Population census 2001

About the Committee

Catalogue of Publications

IMF Special Data Dissemination Standard

Legislation Basis Useful Information

Catalogue of Services

Discuss at forum

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topping.com.ua  
 856  
 446628

Wage arrears by region, 2005  
 (as of month 1-st, mln.UAH)

	January	February	March	April	May	June	July
<b>Ukraine</b>	<b>1111,2</b>	<b>1225,9</b>	<b>1282,6</b>	<b>1295,4</b>	<b>1254,0</b>	<b>1301,7</b>	<b>1341,3</b>
Autonomous Republic of Crimea	43,0	47,1	49,1	50,4	49,1	54,1	52,1
<b>oblasts</b>							
Vinnitsya	47,1	52,7	58,5	64,9	66,9	72,3	73,4
Volyn	9,9	12,6	12,5	14,4	13,0	14,0	13,7
Dnipropetrovsk	82,0	84,5	85,5	84,8	75,6	78,6	82,5
Donetsk	282,6	305,0	314,4	305,2	292,7	304,8	330,2
Zhytomyr	39,3	42,3	44,7	44,0	43,4	45,7	46,3
Zakarpattya	2,1	3,5	3,6	3,2	3,2	3,2	2,7
Zaporizhzhya	35,7	38,2	39,7	40,6	38,8	37,9	39,6
Ivano-Frankivsk	12,4	13,0	12,6	11,9	11,6	11,7	11,9
Kyiv	37,2	41,4	43,2	42,7	41,3	42,3	42,2
Kirovohrad	24,1	28,1	29,6	31,7	32,7	35,0	34,8
Luhansk	114,3	121,5	127,3	128,9	125,3	132,7	138,9
Lviv	41,4	45,3	45,9	48,8	45,6	47,9	50,7
Mykolayiv	23,5	26,1	27,2	29,9	27,1	26,8	26,1
Odesa	21,2	23,6	30,4	30,9	32,2	35,2	36,7
Poltava	26,6	31,1	32,0	33,7	32,2	33,1	32,8
Rivne	8,8	10,7	11,5	11,6	12,2	13,2	14,4
Sumy	31,7	38,5	41,5	40,5	40,2	43,7	43,6
Ternopil	26,9	32,3	32,9	34,3	33,3	33,8	33,5
Kharkiv	36,4	48,0	48,0	48,9	45,0	48,7	48,6
Kherson	42,0	40,0	40,2	38,9	37,6	33,8	33,8
Khmelnytsky	63,3	69,2	70,9	72,9	72,8	69,0	69,0
Cherkasy	25,9	32,3	39,5	41,5	42,2	42,2	40,1
Chernivtsi	5,8	6,5	6,8	6,1	6,1	6,0	6,9
Chernihiv	14,5	18,5	19,4	19,6	19,7	21,3	20,9
City of Kyiv	8,9	6,8	9,7	9,6	9,4	9,7	10,1
City of Sevastopol	4,6	6,1	6,0	5,6	4,8	5,0	5,8

**Footnote.** Since January 2005, the total amount of arrears of wages includes data from economically active enterprises and entities which undergo the procedures regarding the resumption of debtor's ability to pay or a debtor being declared bankrupt. This also incorporates data from economically inactive enterprises.

# EXHIBIT 3

# Transition report update

May 2005



European Bank  
for Reconstruction and Development

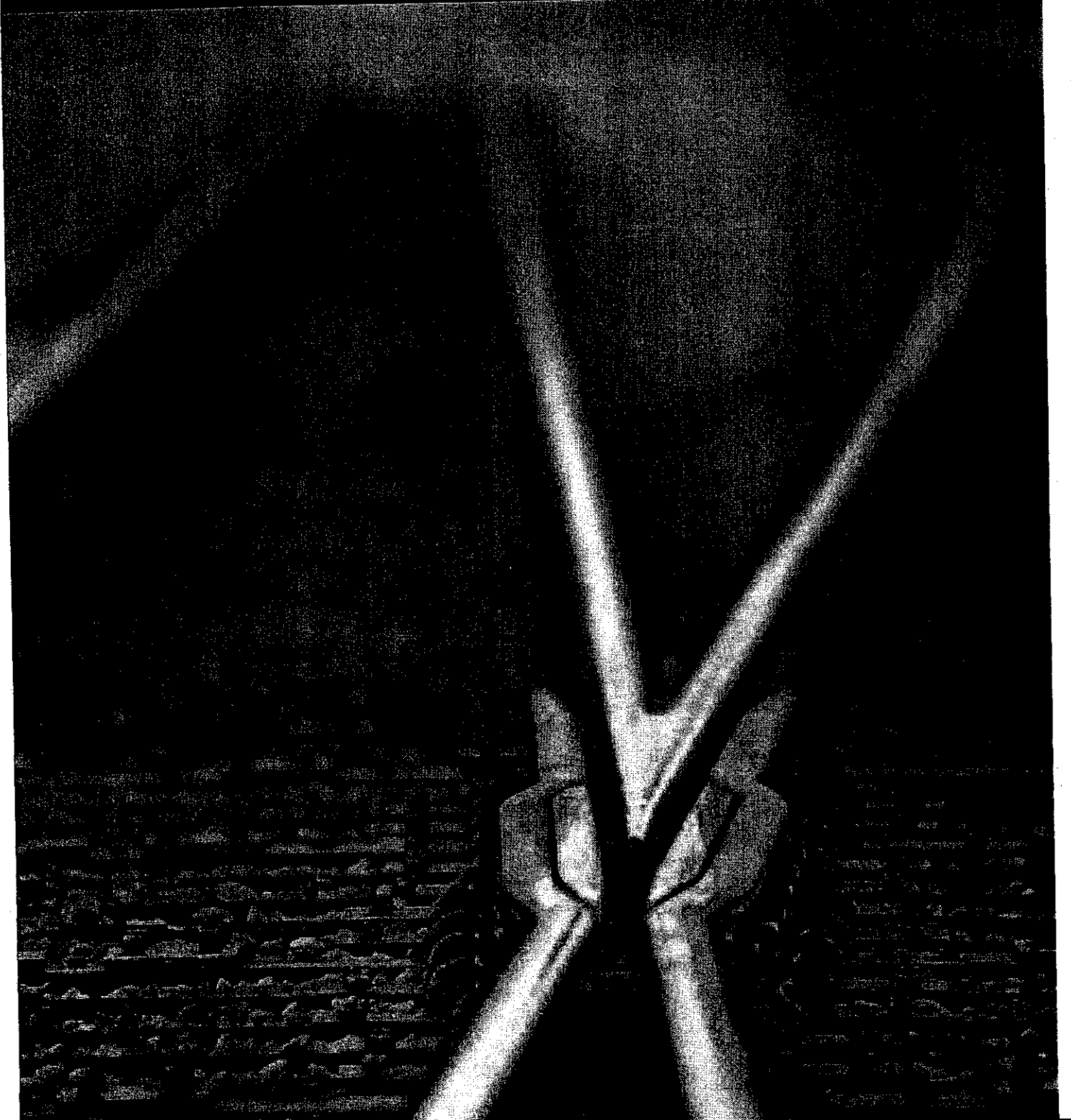


Table A7

**Foreign direct investment**  
 (net inflows recorded in the balance of payments)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Cumulative FDI inflows 1989-2004 (in US\$ mln)	Cumulative FDI inflows per capita 1989-2004 (US\$)	FDI inflows per capita 2003	FDI inflows 2004	FDI inflows 2005	FDI inflows 2004	FDI inflows 2005	FDI inflows 2004	FDI inflows 2005	
<b>Central eastern Europe and the Baltic states</b>																							
Czech Republic	563	749	2,526	1,276	1,275	3,591	6,234	4,943	5,476	8,276	1,895	3,917	4,500	41,704	4,045	184	380	2.1	3.7	2.1	3.7	3.7	
Estonia	156	212	199	111	130	574	222	324	343	153	743	600	494	4,454	2,847	550	444	8.2	5.0	8.2	5.0	5.0	
Hungary	2,328	1,097	4,410	3,295	3,719	3,065	2,191	2,191	3,580	2,590	874	3,547	2,104	37,189	3,719	87	355	1.1	3.5	1.1	3.5	3.5	
Latvia	50	279	245	379	515	303	401	170	170	374	328	365	365	3,737	1,612	141	157	3.0	3.0	3.0	3.0	3.0	
Lithuania	30	31	72	152	328	921	478	375	439	715	142	500	554	4,183	1,212	41	145	1.0	2.0	1.0	2.0	2.0	
Poland	580	1,846	3,617	4,445	4,863	6,049	7,239	9,324	5,802	3,901	3,950	4,316	5,000	56,333	1,471	103	113	2.0	2.0	1.7	2.6	2.6	
Slovak Republic	107	236	194	189	84	374	701	2,058	1,480	4,007	549	1,078	2,500	11,263	2,094	102	200	1.7	2.0	1.7	2.6	2.6	
Slovenia	111	129	161	167	303	221	59	71	371	1,748	-118	-278	346	3,000	1,507	-59	-140	-0.4	-0.9	-0.4	-0.9	-0.9	
<b>Total</b>	<b>3,925</b>	<b>4,580</b>	<b>11,422</b>	<b>10,023</b>	<b>11,217</b>	<b>15,098</b>	<b>18,329</b>	<b>19,686</b>	<b>17,640</b>	<b>21,764</b>	<b>8,363</b>	<b>14,045</b>	<b>15,861</b>	<b>161,254</b>	<b>2,313</b>	<b>144</b>	<b>207</b>	<b>2.3</b>	<b>2.6</b>	<b>2.3</b>	<b>2.6</b>	<b>2.6</b>	
<b>South-eastern Europe</b>																							
SEE-3																							
Bulgaria	40	105	98	138	507	537	802	998	803	876	1,399	1,837	1,800	8,241	1,050	178	234	7.0	8.0	7.0	8.0	8.0	
Croatia	102	110	109	488	347	835	1,420	1,085	1,407	561	1,700	1,100	1,500	9,304	2,106	385	249	6.0	3.0	6.0	3.0	3.0	
Romania	87	341	417	415	1,267	2,079	1,025	1,051	1,154	1,080	2,186	5,020	3,800	16,185	746	99	231	3.8	6.9	3.8	6.9	6.9	
SEE-4																							
Albania	45	65	89	97	42	45	51	143	204	135	178	326	308	1,440	450	56	102	3.0	4.0	3.0	4.0	4.0	
Bosnia and Herzegovina	na	0	0	0	0	67	177	150	130	230	320	420	540	1,493	393	84	111	5.0	5.0	5.0	5.0	5.0	
FYR Macedonia	0	24	12	12	18	118	32	176	439	77	94	150	150	1,152	576	47	75	2.0	3.0	2.0	3.0	3.0	
Serbia and Montenegro	na	na	na	0	740	113	112	25	165	562	1,405	966	1,200	4,088	491	169	116	7.0	4.0	7.0	4.0	4.0	
<b>Total</b>	<b>274</b>	<b>646</b>	<b>725</b>	<b>1,148</b>	<b>2,920</b>	<b>3,794</b>	<b>3,618</b>	<b>3,628</b>	<b>4,302</b>	<b>3,551</b>	<b>7,251</b>	<b>9,819</b>	<b>9,298</b>	<b>41,903</b>	<b>830</b>	<b>146</b>	<b>160</b>	<b>4.8</b>	<b>4.8</b>	<b>4.8</b>	<b>4.8</b>	<b>4.8</b>	
<b>Commonwealth of Independent States</b>																							
Armenia	1	8	25	18	52	221	122	104	70	111	121	178	216	1,031	329	39	57	4.0	5.0	4.0	5.0	5.0	
Azerbaijan	0	22	330	627	1,115	1,023	510	149	299	1,048	2,353	2,531	1,282	10,008	1,212	285	306	33.0	29.0	33.0	29.0	29.0	
Belarus	18	11	15	105	350	201	443	119	96	453	170	168	160	2,147	217	17	17	1.0	1.0	1.0	1.0	1.0	
Georgia	0	8	6	54	236	221	62	153	80	122	335	438	464	1,716	371	73	95	8.0	9.0	8.0	9.0	9.0	
Kazakhstan	473	635	964	1,137	1,320	1,143	1,468	1,278	2,861	2,164	2,188	3,282	2,700	19,012	1,265	148	218	7.4	8.1	7.4	8.1	8.1	
Kyrgyz Republic	10	38	96	47	83	87	38	-7	-1	5	46	116	83	557	110	9	23	2.4	5.0	2.4	5.0	5.0	
Moldova	14	12	25	23	78	75	38	127	53	130	68	122	90	782	217	19	34	3.4	4.7	3.4	4.7	4.7	
Russia	na	408	1,460	1,656	1,681	1,492	1,102	-463	216	-72	-1,769	1,000	1,000	6,711	46	-12	7	0.0	0.0	0.0	0.0	0.0	
Tajikistan	9	12	10	18	18	25	21	24	9	36	32	272	100	495	76	5	42	2.0	13.0	2.0	13.0	13.0	
Turkmenistan	79	103	233	108	108	62	125	131	170	276	218	225	232	1,838	283	35	35	5.0	4.0	5.0	4.0	4.0	
Ukraine	na	151	257	516	581	747	489	594	769	698	1,411	1,600	1,700	7,813	161	29	33	3.0	3.0	3.0	3.0	3.0	
Uzbekistan	48	73	-24	90	-167	140	121	75	83	65	70	180	250	1,097	42	3	7	1.0	2.0	1.0	2.0	2.0	
<b>Total</b>	<b>652</b>	<b>1,480</b>	<b>3,398</b>	<b>4,399</b>	<b>5,789</b>	<b>5,437</b>	<b>4,540</b>	<b>2,284</b>	<b>4,704</b>	<b>5,036</b>	<b>5,243</b>	<b>10,112</b>	<b>8,277</b>	<b>53,207</b>	<b>367</b>	<b>54</b>	<b>73</b>	<b>5.9</b>	<b>6.9</b>	<b>5.9</b>	<b>6.9</b>	<b>6.9</b>	
<b>All transition countries</b>	<b>4,850</b>	<b>6,706</b>	<b>15,545</b>	<b>15,569</b>	<b>19,926</b>	<b>24,328</b>	<b>26,487</b>	<b>25,598</b>	<b>26,646</b>	<b>30,351</b>	<b>20,857</b>	<b>33,976</b>	<b>33,436</b>	<b>256,364</b>	<b>1,061</b>	<b>104</b>	<b>135</b>	<b>4.5</b>	<b>5.1</b>	<b>4.5</b>	<b>5.1</b>	<b>5.1</b>	

Sources: IMF, central banks and EBRD estimates.

	1999	2000	2001	2002	2003	2004 Estimate	2005 Projection
<i>(Percentage change in real terms)</i>							
<b>Output and expenditure</b>							
GDP	-0.2	5.9	9.2	5.2	9.4	12.1	6.5
Private consumption	-2.2	2.3	9.0	9.0	12.1	12.5	na
Public consumption	-7.9	1.0	10.4	-6.7	14.8	13.0	na
Gross fixed capital formation <sup>1</sup>	0.1	12.4	6.2	3.4	15.8	11.0	na
Exports of goods and services	-2.2	21.5	3.5	7.4	10.3	10.0	na
Imports of goods and services	-16.7	23.8	6.0	3.3	16.4	9.5	na
Industrial gross output	4.0	13.2	14.2	7.0	15.8	12.5	na
Agricultural gross output	-6.9	9.8	10.2	1.2	-11.0	19.1	na
<i>(Percentage change)</i>							
<b>Employment</b>							
Labour force (end-year)	0.2	0.3	-0.1	0.5	0.3	na	na
Employment (end-year)	-2.5	-1.2	1.7	0.3	0.5	na	na
	<i>(In per cent of labour force)</i>						
Unemployment (end-year)	4.3	4.2	3.7	3.8	3.6	3.6	na
<i>(Percentage change)</i>							
<b>Prices and wages</b>							
Consumer prices (annual average)	22.7	28.2	12.0	0.8	5.2	9.0	13.5
Consumer prices (end-year)	19.2	25.8	6.1	-0.6	8.2	12.3	11.1
Producer prices (annual average)	31.1	20.8	8.7	3.0	7.6	20.4	na
Producer prices (end-year)	15.7	20.6	0.9	5.7	11.1	24.1	na
Gross average monthly earnings in economy (annual average)	16.3	29.2	35.2	20.9	22.9	27.7	na
<i>(In per cent of GDP)</i>							
<b>Government sector<sup>2</sup></b>							
General government balance	-2.3	-1.1	-0.9	0.1	-0.7	-3.4	-3.0
General government expenditure	34.1	34.5	34.4	35.6	37.7	37.2	na
General government debt	51.0	45.9	36.9	33.5	29.3	24.7	na
<i>(Percentage change)</i>							
<b>Monetary sector</b>							
Broad money (M2, end-year)	40.7	45.3	43.2	42.3	46.9	32.8	na
Domestic credit (end-year)	30.5	23.1	18.7	28.9	39.6	24.8	na
	<i>(In per cent of GDP)</i>						
Broad money (M2, end-year)	16.6	18.5	22.1	28.5	35.8	36.3	na
<i>(In per cent per annum, end-year)</i>							
<b>Interest and exchange rates</b>							
Refinancing rate	45.0	27.0	12.5	7.0	7.0	9.0	na
Treasury bill rate (3-month maturity)	na	na	na	na	na	na	na
Deposit rate <sup>3</sup>	20.7	13.7	11.0	7.9	7.0	7.7	na
Lending rate <sup>2</sup>	55.0	41.5	32.3	25.4	17.9	17.9	na
	<i>(Hryvnias per US dollar)</i>						
Exchange rate (end-year)	5.2	5.4	5.3	5.3	5.3	5.3	na
Exchange rate (annual average)	4.1	5.4	5.4	5.3	5.3	5.3	na
<i>(In millions of US dollars)</i>							
<b>External sector</b>							
Current account	1,658	1,481	1,402	3,173	2,891	6,680	4,100
Trade balance	244	779	198	710	-268	3,370	1,500
Merchandise exports	13,189	15,722	17,091	18,669	23,739	32,670	36,500
Merchandise imports	12,945	14,943	16,893	17,959	24,008	29,300	35,000
Foreign direct investment, net	489	594	769	698	1,411	1,600	1,700
Gross reserves, excluding gold (end-year)	1,046	1,353	2,955	4,241	6,731	9,302	na
External debt stock <sup>4</sup>	13,532	11,819	12,098	12,771	14,578	18,672	na
	<i>(In months of imports of goods and services)</i>						
Gross reserves, excluding gold (end-year)	0.8	0.9	1.7	2.4	2.9	3.3	na
	<i>(In per cent of exports of goods and services)</i>						
Debt service <sup>5</sup>	15.9	10.4	8.7	5.7	6.3	5.0	na
<i>(Denominations as indicated)</i>							
<b>Memorandum items</b>							
Population (end-year, million)	50.1	49.3	49.0	48.7	48.4	48.4	na
GDP (in billions of hryvnias)	130	170	204	226	264	346	412
GDP per capita (in US dollar)	631	634	777	870	1,024	1,343	na
Share of industry in GDP (in per cent)	27.2	26.7	27.1	30.5	31.0	30.0	na
Share of agriculture in GDP (in per cent)	11.7	14.4	14.4	13.4	13.0	13.5	na
Current account/GDP (in per cent)	5.2	4.7	3.7	7.5	5.8	19.3	5.3
External debt - reserves (in US\$ million)	12,486	10,466	9,143	8,530	7,847	9,370	na
External debt/GDP (in per cent)	42.8	37.8	31.8	30.1	29.4	28.7	na
External debt/exports of goods and services (in per cent)	79.3	60.5	57.4	54.7	50.4	48.7	na

<sup>1</sup> Includes changes in inventories.

<sup>2</sup> General government includes the state, municipalities and, from 1994, extra-budgetary funds.

<sup>3</sup> Weighted average over all maturities.

<sup>4</sup> Public and publicly guaranteed debt and an estimate of the stock of private debt (in both cases medium and long-term debt only).

<sup>5</sup> Refers to payments on official debt only.

# EXHIBIT 4

# Transition report 2004

**Infrastructure**



**European Bank**  
for Reconstruction and Development



## Annex 1.1: Legal Indicator Survey 2004

Progress in legal reform in the transition countries can be measured by assessing both the current laws ("laws in transition") and how these laws work in practice ("laws in action"). The Legal Indicator Survey (LIS) uses case studies to gauge how a specific area of the law is working.<sup>1</sup> Together with an assessment of laws in transition, the survey provides a broad and reasonably complete picture of a key aspect of the legal framework. This year the LIS focuses on insolvency law.

Bankruptcy and insolvency legal systems are often, incorrectly, thought to be solely about helping creditors recover loans made to debtors. Although that is a principal function of an insolvency law, the ultimate purpose of any insolvency regime is to redistribute the assets of uncompetitive or inefficient entities. This is done in many ways, such as the sale of assets to more efficient entities, distributing assets to constituencies including creditors, governments and employees and turning inefficient entities into more efficient ones through corporate re-organisation. Evidence suggests that countries with insolvency law regimes that operate in a predictable and efficient manner will attract greater investment. Also, the cost of credit will be more affordable as creditors have greater confidence.<sup>2</sup>

### Assessment of insolvency laws, 2003-04

The EBRD's assessment of insolvency laws (as they relate to corporate entities) is designed to measure their compliance with international standards and best practice.<sup>3</sup> To this end, a list of 97 fields of inquiry – grouped into five "core areas" – has been created, using the most widely accepted international

standards adopted by the World Bank, the Asian Development Bank and the United Nations Commission on International Trade Law (UNCITRAL). The core areas are: commencement of proceedings; treatment of estate assets; treatment and involvement of creditors; terminal/liquidation processes; and reorganisation processes.

An effective insolvency legal regime should:

- allow for relatively easy and predictable access to insolvency proceedings by debtors and creditors
- provide a variety of remedies (for example, liquidation and rehabilitation) for the financial problems of an insolvent debtor
- provide for the efficient and prompt administration of an insolvency case
- generally treat the interests of creditors as paramount.

Experts in the field of insolvency retained by the EBRD studied legislation in all 27 transition countries, analysing laws with regard to the 97 fields of inquiry. Detailed "score sheets" relating to each field were prepared for each country.<sup>4</sup> In nearly every case, practitioners in each country were used to verify the



Table A.1.1.1

## Level of compliance with international insolvency standards

Very low	Low	Medium	High	Very high
Lithuania	Azerbaijan	Armenia	Albania	
Tajikistan	Georgia	Belarus	Bosnia and Herzegovina	
Turkmenistan	Hungary	Czech Republic	Bulgaria	
Ukraine	Latvia	Estonia	Croatia	
	Slovenia	Kazakhstan	Moldova	
	Uzbekistan	Kyrgyz Republic	Romania	
		FYR Macedonia	Serbia and Montenegro	
		Poland		
		Russia		
		Slovak Republic		

Source: EBRD Legal Indicator Survey, 2004.

assessments of the EBRD experts. A final numerical score was assigned to each country and the countries were subsequently grouped according to their level of compliance with international standards (ranging from "very low" to "very high", as shown in Table A.1.1.1).

There was considerable variation across the transition countries. No country was rated as having "very high" compliance. Those countries with the best assessments all come from south-eastern Europe (SEE). The most advanced reformers from central eastern Europe and the Baltic states (CEB) are spread across the "very low", "low" and "medium" compliance categories. There is plainly room for improvement in the quality of insolvency laws across the whole transition region.

### "High" compliance countries

Countries in the "high" compliance category typically have laws that provide a clear definition of when a debtor can be deemed insolvent. They make an attempt at providing, legislatively, for cross-border insolvencies, give insolvency administrators powers to review suspicious transactions, and are generally compliant with international standards in each of the five core areas. Some countries, such as Bulgaria and Romania, also make provision for priority (or DIP) financing to be obtained by the debtor during a restructuring.<sup>5</sup> This is a rare, but laudable, feature of insolvency laws in the region. The "high" ranking of these countries indicates general compliance but not the absence of deficiencies. Although their insolvency legislation is among the strongest in the region, each country's laws could certainly be improved.

### "Medium" compliance countries

The "medium" compliance category has the largest number of countries. It also contains countries with the most internally divergent results. Although some (Belarus, for example) have relatively strong provisions dealing with the avoidance of pre-bankruptcy transactions, an initial application to commence proceedings may be delayed for up to seven months before being dealt with by the courts. Similarly, the Slovak law provides for reasonable commencement criteria, interim protection of debtors and requires the delivery of assets by the debtor to the insolvency administrator. However, it does not clearly state how secured creditors are dealt with, does not provide for anticipatory insolvency – when it is known that a debtor is sure to become insolvent in the very near future – and has inadequate provisions to deal with cross-border insolvencies.

### "Low" compliance countries

Six countries are in the "low" compliance category and generally require serious improvement in all of the five core areas. The poor treatment of creditors is often a feature of their laws. In Georgia, for example, creditors are not even directly notified of their responsibility to file claims in bankruptcy cases. "Low" compliance countries often have limited or non-existent provisions for dealing with cross-border insolvencies. Their most significant legal shortcoming, however, is in the area of reorganisation of insolvent debtors. Slovenia (together with many others) requires unrealistic levels of repayment to creditors before a reorganisation plan is approved. Nearly all "low" compliance countries have failed to address the need to help restructuring debtors with additional working capital.

### "Very low" compliance countries

The four countries in the "very low" compliance category have functioning insolvency legislation, but it is rudimentary and severely deficient in all core areas. Their laws complicate the initial filing process, either through unclear and inadequate criteria for the commencement of proceedings or through time-consuming procedural requirements (such as employee consultations in Ukraine). All four countries have inadequate legal provisions regarding the qualifications of insolvency administrators, cross-border insolvencies and the avoidance of pre-bankruptcy transactions.

### Common area of weakness


A common area of weakness shared by most countries, in all of the above categories, relates to cross-border insolvencies. There has been an increase in cross-border trade and economic integration between, and within, the various transition sub-regions. There is likely to be, therefore, a corresponding rise in the number of cases of enterprise insolvency involving assets and business interests in more than one country.

However, only a few of the laws examined in the assessment provide for recognition and assistance in such cases. Of those laws that do, the provisions are often short and unspecific. Lenders whose clients operate in multiple jurisdictions can therefore expect significant difficulties when using insolvency proceedings to enforce their rights across various countries. Similarly, debtors intent on reorganisation should not assume that courts in one jurisdiction will honour the laws and rulings of another.

### Insolvency laws in action

To complement the assessment of laws in transition described above, the EBRD conducted a survey of lawyers working in the region on how those laws are applied in practice. The aim of the survey was to assess how the legislation, together with the local institutional framework in each country – including rules of procedure, courts and judges and insolvency administrators – work to create a functional (or dysfunctional) insolvency legal regime.

# EXHIBIT 5

Source: [News & Business](#) > [News](#) > [News, Most Recent Two Years \(English, Full Text\)](#) 

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*EIU ViewsWire July 26, 2005 Tuesday Ukraine*

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**July 26, 2005 Tuesday**

**LENGTH:** 1511 words

**HEADLINE:** Ukraine economy: Stuck on the threshold of the WTO?

**BODY:**

COUNTRY BRIEFING

FROM THE ECONOMIST INTELLIGENCE UNIT

In passing several key laws in early July the Ukrainian parliament kept alive the government's hopes of joining the World Trade Organisation (WTO) by the end of the year. However, the poor recent performance of Ukraine's political class suggests that accession is still far from certain and raises more general concerns over the effectiveness of the country's new leadership.

Much to gain

Ukraine's parliamentarians approved six trade-related laws on July 6th-7th at the last possible moment before the summer recess. They also passed an additional three bills in a first reading. The process of debating and voting these laws proved unprecedentedly raucous featuring deafening protests by the opposition and brawls between deputies but the final outcome has at least kept the country's WTO aspirations on track.

The government hopes that the trade body will approve Ukraine's accession at its mid-December summit in Hong Kong. Considerably more work is nevertheless still needed. Parliament will have to move quickly when it reconvenes in early September, having rejected or failed to consider several other bits of legislation required. These efforts could founder in the face of vested interests, which remain well represented in parliament even within pro-government factions. With the March 2006 parliamentary election approaching, deputies are likely to be particularly wary of alienating important interests or constituents.

Ukraine also still needs to complete bilateral negotiations with members of its WTO working group. It has concluded agreements with 37 countries, but still must finish talks with 13 more. These include the US, which could still object to some aspects of the legislation recently approved, and Australia, which continues to demand greater access for its sugar exports.

Should Ukraine fail on these fronts, the consequences would be significant. If accession is delayed, the government could be forced to renegotiate a number of the bilateral agreements already concluded, given that WTO rules in certain areas (for instance regarding agricultural subsidies) are expected to tighten in 2006. Moreover, any delays would increase the chance that Russia enters the WTO first. Ukraine would then face particularly difficult negotiations with its largest trading partner according to some reports, Russia has been actively lobbying sympathetic Ukrainian deputies with this in mind.

Further setbacks would also, obviously, defer the benefits to be had from membership in the world's most important trade body. As a WTO member, Ukraine would be much better protected against the anti-dumping charges and quotas that many of its key sectors particularly steel and chemicals currently face. It would also enjoy improved access to new markets and, once the distortionary effects of its existing trade restrictions are lessened, its economy would become more efficient. These effects are expected to outweigh the downside to WTO membership namely an increase in pressure felt by a number of protected domestic industries.

Maybe halfway there

The most important of the six laws passed in early July was one stiffening intellectual property rights. The new law addresses international concerns over Ukraine's role as a hub for laser-disk piracy, and paves the way for a deal with the US, which has long maintained sanctions against Ukraine as a result of this issue.

The other laws approved by parliament are also significant. Two of them relate to the automotive sector. They ease restrictions on used car imports, stiffen environmental standards and lift requirements that half of components used by Ukrainian car manufacturers be domestically sourced. Two other laws pave the way for foreign auditors and life-insurers to operate in Ukraine. A final law, also approved in full in early July, will gradually lower the export duty levied on sunflower seeds.

In addition parliament has preliminarily approved three bills that will now presumably go to a final vote in September. The first two would allow foreigners to own a larger share of Ukrainian broadcast companies and permit foreign banks to operate in Ukraine. The third would lift the existing export ban on alloyed ferrous metal scrap and non-ferrous metal scrap.

The opposition to further reforms nevertheless remains considerable. The deputies who voted against additional changes include not only those who are clearly opposed to the new government namely deputies from the Communist Party of Ukraine and from factions linked to the oligarch interests that had underpinned the previous government. Some of the resistance has also come from otherwise pro-government deputies. These deputies either have business interests in key sectors, or else have long opposed greater trade liberalisation. Some, with an eye to next year's parliamentary election, are merely hesitant to back the government fully.

This combination of forces has so far succeeded in blocking a number of bills. It voted down measures to scale back sugar quotas and reduce the export duty on ferrous metal scrap, and ensured that parliament not even consider laws to eliminate duties on live cattle exports, reduce the duty on hides, permit the import of raw sugar cane and cancel dairy export subsidies.

Disunity and inefficacy

The failure of both the government and the presidential secretariat to ensure the loyalty of their parliamentary allies during the recent votes is of particular concern. It increases doubts over further progress on WTO-related legislation being possible once deputies return in September. It also raises questions over the cohesion of the existing cabinet, and over the possibility of a stable, pro-government majority forming in parliament after the 2006 election.

The cabinet headed by the prime minister, Yuliya Tymoshenko, consists of a broad coalition. It includes not only her own allies and those of the president, Viktor Yushchenko, but also members of the Socialist Party of Ukraine (SPU) and the Party of Industrialists and Entrepreneurs. Leaders of the latter two groups have loudly opposed parts of the government's WTO agenda. The criticism voiced by one SPU member in particular, Agriculture Minister Oleksandr Baranovskiy, has brought the lack of cabinet cohesion into sharp relief.

Mr Yushchenko and Ms Tymoshenko had moreover hoped that the speaker of parliament, Volodymyr Lytvyn, would ally himself with their two parties in advance of next year's parliamentary election. This now appears more in doubt. Although Mr Lytvyn's faction, the People's Party, ultimately backed the WTO bills in

early July, his behaviour in the lead-up to the vote was hardly consistent. Not least, he warned against key reforms related to agriculture, and appears to have helped to keep some of the government's proposals off the parliamentary agenda.

The ineffectiveness displayed by the government and the presidential secretariat is equally of concern. Having declared WTO accession as a key policy goal, the cabinet proved inept at pushing its agenda. It hesitated until late May to spell out the steps required or to finalise the necessary proposals, and then rushed them, belatedly, to parliament.. This permitted opponents to criticise the government's proposals as poorly drafted, and to refuse to back bills that they had not had a chance to consider properly. Dismissive statements by the government and by Mr Yushchenko himself that parliament should just go ahead and pass the bills further alienated legislators.

Similarly counterproductive was Mr Yushchenko's willingness to tolerate the reluctance of many on his team to surrender their parliamentary mandates as required by law once they move into other posts. Mr Yushchenko finally forced them to do so at the start of July but only after the opposition had used this **issue** as an excuse to block consideration of the **WTO** bills.

The government's tactical errors and internal divisions as revealed during the WTO-related votes have fuelled concerns over the future of its reform agenda more generally. **Ukraine's** new leadership has undoubtedly succeeded on several fronts since coming to power earlier in 2005. In contrast to the previous administration, it has embarked on serious efforts to level the economic playing field, reduce corruption, enforce the rule of law and free up the media. However, it has badly mishandled a number of issues not least its pledge to revisit shady privatisation deals agreed in the past. It has also showed an inability to prioritise effectively, or work smoothly with parliament, or avoid resorting to state intervention when confronted with difficult problems. Although **Ukraine's** new governing team is still widely and correctly hailed as a significant improvement on the past, failure on the **WTO issue** would add to growing concerns that it is failing to live up to potential.

SOURCE: ViewsWire Eastern Europe

LOAD-DATE: July 26, 2005

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# EXHIBIT 6

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## Transparency International Corruption Perceptions Index 2004

### Corruption is rampant in 60 countries, and the public sector is plagued by bribery, says TI

Transparency International's Corruption Perceptions Index 2004 ranks a record 146 countries; most oil-producing nations are prone to high corruption

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- [Statement by Peter Eigen, Chairman of Transparency International on the launch of the CPI 2004](#)
- [Table 1: Transparency International Corruption Perceptions Index 2004](#)
- [Table 2: Survey sources for the CPI 2004](#)
- [Frequently asked questions about the CPI 2004](#)
- [Short methodological note on the CPI 2004 \(PDF\)](#)
- [Background paper- Framework Document CPI 2004 \(PDF\)](#)
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London, 20 October 2004 --- "Corruption in large-scale public projects is a daunting obstacle to sustainable development, and results in a major loss of public funds needed for education, healthcare and poverty alleviation, both in developed and developing countries," said Transparency International (TI) Chairman Peter Eigen today at the launch of the TI Corruption Perceptions Index 2004.

"If we hope to reach the Millennium Development Goal of halving the number of people living in extreme poverty by 2015, governments need to seriously tackle corruption in public contracting," said Eigen. TI estimates that the amount lost due to bribery in government procurement is at least US\$ 400 billion per year worldwide.

A total of 106 out of 146 countries score less than 5 against a clean score of 10, according to the new index, published today by Transparency International, the leading non-governmental organisation fighting corruption worldwide. Sixty countries score less than 3 out of 10, indicating rampant corruption. Corruption is perceived to be most acute in Bangladesh, Haiti, Nigeria, Chad, Myanmar, Azerbaijan and Paraguay, all of which have a score of less than 2.

"Corruption robs countries of their potential," said Eigen. "As the Corruption Perceptions Index 2004 shows, oil-

## CPI 2004 English

rich Angola, Azerbaijan, Chad, Ecuador, Indonesia, Iran, Iraq, Kazakhstan, Libya, Nigeria, Russia, Sudan, Venezuela and Yemen all have extremely low scores. In these countries, public contracting in the oil sector is plagued by revenues vanishing into the pockets of western oil executives, middlemen and local officials."

TI urges western governments to oblige their oil companies to publish what they pay in fees, royalties and other payments to host governments and state oil companies. "Access to this vital information will minimise opportunities for hiding the payment of kickbacks to secure oil tenders, a practice that has blighted the oil industry in transition and post-war economies," said Eigen.

"The future of Iraq depends on transparency in the oil sector," added Eigen. "The urgent need to fund postwar construction heightens the importance of stringent transparency requirements in all procurement contracts," he continued. "Without strict anti-bribery measures, the reconstruction of Iraq will be wrecked by a wasteful diversion of resources to corrupt elites."

According to TI Vice Chair Rosa Inés Ospina Robledo, "across the globe, international donors and national governments must do more to ensure transparency in public procurement by introducing no-bribery clauses into all major projects." Speaking in Bogota, Colombia, today, she said: "Tough sanctions are needed against companies caught bribing, including forfeit of the contract and blacklisting from future bidding."

Tenders should include objective award criteria and public disclosure of the entire process, argues TI. Exceptions to open competitive bidding must be kept to a minimum, and explained and recorded, since limited bidding and direct contracting are particularly prone to manipulation and corruption. Public contracting must be monitored by independent oversight agencies and civil society.

"Companies from OECD countries must fulfil their obligations under the OECD Anti-Bribery Convention and stop paying bribes at home and abroad," said Rosa Inés Ospina Robledo. "With the spread of anti-bribery legislation, corporate governance and anti-corruption compliance codes, managers have no excuse for paying bribes."

The Corruption Perceptions Index is a poll of polls, reflecting the perceptions of business people and country analysts, both resident and non-resident. This year's Corruption Perceptions Index draws on 18 surveys provided to Transparency International between 2002 and 2004, conducted by 12 independent institutions.

Countries with a score of higher than 9, with very low levels of perceived corruption, are predominantly rich countries, namely Finland, New Zealand, Denmark, Iceland, Singapore, Sweden and Switzerland. "But the poorest countries, most of which are in the bottom half of the index, are in greatest need of support in fighting corruption," said Eigen.

On the basis of data from sources that were used for both the 2003 and 2004 index, since last year an increase in perceived corruption can be observed for Bahrain, Belize, Cyprus, Dominican Republic, Jamaica, Kuwait, Luxembourg, Mauritius, Oman, Poland, Saudi Arabia, Senegal, and Trinidad and Tobago.

On the same basis, a fall in corruption was perceived in Austria, Botswana, Czech Republic, El Salvador, France, Gambia, Germany, Jordan, Switzerland, Tanzania, Thailand, Uganda, United Arab Emirates and Uruguay.

The index includes only those countries that feature in at least three surveys. As a result, many countries - including some which could be among the most corrupt - are missing because there simply is not enough survey data available.

The statistical work on the index was coordinated by Professor Johann Graf Lambsdorff at Passau University in Germany, advised by a group of international specialists.

London, 20 October 2004

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**Table 1: TI Corruption Perceptions Index 2004**

This table was compiled at the University of Passau on behalf of Transparency International. For information on data and methodology, please consult the frequently asked questions and the framework document.

TI Corruption Perceptions Index 2004					Survey reference**** (for more details, see table of sources)																	
Country Rank	Country	2004 CPI Score*	Confidence Range**	Surveys Used***	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
					EPS 2002	CU 2003	EIU 2004	FH 2004	II 2003	IMD 2002	IMD 2003	IMD 2004	MDB 2002	MIG 2004	PERC 2002	PERC 2003	PERC 2004	TI/GI 2002	WMRC 2004	WEF 2002	WEF 2003	WEF 2004
1	Finland	9,7	9,5 - 9,8	9			#			#	#	#		#					#	#	#	#
2	New Zealand	9,6	9,4 - 9,6	9			#			#	#	#		#					#	#	#	#
3	Denmark	9,5	9,3 - 9,7	10		#	#			#	#	#		#					#	#	#	#
	Iceland	9,5	9,4 - 9,7	8						#	#	#		#					#	#	#	#
5	Singapore	9,3	9,2 - 9,4	13			#			#	#	#		#	#	#	#	#	#	#	#	#
6	Sweden	9,2	9,1 - 9,3	11		#	#			#	#	#		#					#	#	#	#
7	Switzerland	9,1	8,9 - 9,2	10			#			#	#	#		#					#	#	#	#
8	Norway	8,9	8,6 - 9,1	9			#			#	#	#		#					#	#	#	#
9	Australia	8,8	8,4 - 9,1	15		#	#		#	#	#	#		#	#	#	#	#	#	#	#	#
10	Netherlands	8,7	8,5 - 8,9	10			#			#	#	#		#					#	#	#	#
11	United Kingdom	8,6	8,4 - 8,8	12		#	#		#	#	#	#		#				#	#	#	#	#
12	Canada	8,5	8,1 - 8,9	12		#	#		#	#	#	#		#				#	#	#	#	#
13	Austria	8,4	8,1 - 8,8	10			#			#	#	#		#					#	#	#	#
	Luxembourg	8,4	8,0 - 8,9	7						#	#	#		#					#	#	#	#
15	Germany	8,2	8,0 - 8,5	11		#	#			#	#	#		#				#	#	#	#	#
16	Hong Kong	8,0	7,1 - 8,5	13			#			#	#	#		#	#	#	#	#	#	#	#	#
17	Belgium	7,5	7,1 - 8,0	10			#			#	#	#		#					#	#	#	#
	Ireland	7,5	7,2 - 7,9	10		#	#			#	#	#		#					#	#	#	#
	USA	7,5	6,9 - 8,0	14			#			#	#	#		#	#	#	#	#	#	#	#	#
20	Chile	7,4	7,0 - 7,8	11		#	#			#	#	#		#					#	#	#	#
21	Barbados	7,3	6,6 - 7,6	3			#			#	#	#		#					#	#	#	#
22	France	7,1	6,6 - 7,6	12		#	#		#	#	#	#		#				#	#	#	#	#
	Spain	7,1	6,7 - 7,4	11		#	#			#	#	#		#					#	#	#	#
24	Japan	6,9	6,2 - 7,4	15		#	#		#	#	#	#		#	#	#	#	#	#	#	#	#
25	Malta	6,8	5,3 - 8,2	4										#					#	#	#	#
26	Israel	6,4	5,6 - 7,1	10		#	#			#	#	#		#					#	#	#	#
27	Portugal	6,3	5,8 - 6,8	9			#			#	#	#		#					#	#	#	#
28	Uruguay	6,2	5,9 - 6,7	6										#					#	#	#	#
29	Oman	6,1	5,1 - 6,8	5		#	#		#					#					#			#
	United Arab Emirates	6,1	5,1 - 7,1	5			#			#				#					#			#
31	Botswana	6,0	5,3 - 6,8	7		#	#							#					#	#	#	#
	Estonia	6,0	5,6 - 6,7	12	#	#	#			#	#	#		#					#	#	#	#
	Slovenia	6,0	5,6 - 6,6	12	#	#	#			#	#	#		#					#	#	#	#
34	Bahrain	5,8	5,5 - 6,2	5			#			#				#					#	#	#	#
35	Taiwan	5,6	5,2 - 6,1	15		#	#		#	#	#	#		#	#	#	#	#	#	#	#	#
36	Cyprus	5,4	5,0 - 5,8	4		#	#							#					#	#	#	#
37	Jordan	5,3	4,6 - 5,9	9			#			#	#	#		#					#	#	#	#
38	Qatar	5,2	4,6 - 5,6	4			#			#	#	#		#	#	#	#	#	#	#	#	#
39	Malaysia	5,0	4,5 - 5,6	15		#	#		#	#	#	#		#	#	#	#	#	#	#	#	#
	Tunisia	5,0	4,5 - 5,6	7		#	#							#					#	#	#	#
41	Costa Rica	4,9	4,2 - 5,8	8		#	#						#	#					#	#	#	#
42	Hungary	4,8	4,6 - 5,0	12	#	#	#	#		#	#	#		#				#	#	#	#	#
	Italy	4,8	4,4 - 5,1	10			#			#	#	#		#					#	#	#	#
44	Kuwait	4,6	3,8 - 5,3	5		#	#			#				#					#	#	#	#
	Lithuania	4,6	4,0 - 5,4	9	#	#	#	#		#	#	#		#					#	#	#	#
	South Africa	4,6	4,2 - 5,0	11		#	#			#	#	#	#		#				#	#	#	#
47	South Korea	4,5	4,0 - 4,9	14			#			#	#	#	#	#	#	#	#	#	#	#	#	#
48	Seychelles	4,4	3,7 - 5,0	3			#							#					#	#	#	#
	Greece	4,3	4,0 - 4,8	9			#			#	#	#		#					#	#	#	#

PI 2004 English

49	Suriname	4,3	2.1 - 5.8	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
51	Czech Republic	4,2	3.7 - 4.9	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	El Salvador	4,2	3.3 - 5.1	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Trinidad and Tobago	4,2	3.6 - 5.2	6	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
54	Bulgaria	4,1	3.7 - 4.6	10	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Mauritius	4,1	3.2 - 4.8	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Namibia	4,1	3.5 - 4.6	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
57	Latvia	4,0	3.8 - 4.3	8	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Slovakia	4,0	3.6 - 4.5	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
59	Brazil	3,9	3.7 - 4.1	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
60	Belize	3,8	3.4 - 4.1	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Colombia	3,8	3.4 - 4.1	10	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
62	Cuba	3,7	2.2 - 4.7	4	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Panama	3,7	3.4 - 4.2	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
64	Ghana	3,6	3.1 - 4.1	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Mexico	3,6	3.3 - 3.8	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Thailand	3,6	3.3 - 3.9	14	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
67	Croatia	3,5	3.3 - 3.8	9	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Peru	3,5	3.3 - 3.7	8	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Poland	3,5	3.1 - 3.9	13	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Sri Lanka	3,5	3.1 - 3.9	8	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
71	China	3,4	3.0 - 3.8	16	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Saudi Arabia	3,4	2.7 - 4.0	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Syria	3,4	2.8 - 4.1	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
74	Belarus	3,3	1.9 - 4.8	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Gabon	3,3	2.1 - 3.7	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Jamaica	3,3	2.8 - 3.7	6	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
77	Benin	3,2	2.0 - 4.3	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Egypt	3,2	2.7 - 3.8	8	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Mali	3,2	2.2 - 4.2	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Morocco	3,2	2.9 - 3.5	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Turkey	3,2	2.8 - 3.7	13	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
82	Armenia	3,1	2.4 - 3.7	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Bosnia and Herzegovina	3,1	2.7 - 3.5	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Madagascar	3,1	1.8 - 4.4	4	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
85	Mongolia	3,0	2.6 - 3.2	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Senegal	3,0	2.5 - 3.5	6	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
87	Dominican Republic	2,9	2.4 - 3.3	6	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Iran	2,9	2.2 - 3.4	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Romania	2,9	2.5 - 3.4	12	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
90	Gambia	2,8	2.2 - 3.4	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	India	2,8	2.6 - 3.0	15	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Malawi	2,8	2.2 - 3.7	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Mozambique	2,8	2.4 - 3.1	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Nepal	2,8	1.6 - 3.4	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Russia	2,8	2.5 - 3.1	15	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Tanzania	2,8	2.4 - 3.2	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
97	Algeria	2,7	2.3 - 3.0	6	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Lebanon	2,7	2.1 - 3.2	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Macedonia	2,7	2.3 - 3.2	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Nicaragua	2,7	2.5 - 3.0	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Serbia and Montenegro	2,7	2.3 - 3.0	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
102	Eritrea	2,6	1.6 - 3.4	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Papua New Guinea	2,6	1.9 - 3.4	4	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Philippines	2,6	2.4 - 2.9	14	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Uganda	2,6	2.1 - 3.1	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Vietnam	2,6	2.3 - 2.9	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Zambia	2,6	2.3 - 2.9	6	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
108	Albania	2,5	2.0 - 3.0	4	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Argentina	2,5	2.2 - 2.8	11	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Libya	2,5	1.9 - 3.0	4	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
112	Palestinian Authority	2,5	2.0 - 2.7	3	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Ecuador	2,4	2.3 - 2.5	7	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Yemen	2,4	1.9 - 2.9	5	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Congo, Republic of	2,3	2.0 - 2.7	4	#	#	#	#	#	#	#	#	#	#	#	#	#	#	#

114	Ethiopia	2,3	1.9 - 2.9	6	#	#											#	#	#
	Honduras	2,3	2.0 - 2.6	7	#	#											#	#	#
	Moldova	2,3	2.0 - 2.8	5	#	#	#										#	#	#
	Sierra Leone	2,3	2.0 - 2.7	3		#	#										#	#	#
	Uzbekistan	2,3	2.1 - 2.4	6	#	#	#	#									#	#	#
	Venezuela	2,3	2.2 - 2.5	11		#	#		#	#	#	#	#	#	#	#	#	#	#
	Zimbabwe	2,3	1.9 - 2.7	7		#	#										#	#	#
122	Bolivia	2,2	2.1 - 2.3	6		#	#										#	#	#
	Guatemala	2,2	2.0 - 2.4	7		#	#										#	#	#
	Kazakhstan	2,2	1.8 - 2.7	7	#	#	#	#									#	#	#
	Kyrgyzstan	2,2	2.0 - 2.5	5	#	#	#	#									#	#	#
	Niger	2,2	2.0 - 2.5	3		#	#										#	#	#
	Sudan	2,2	2.0 - 2.3	5		#	#	#									#	#	#
	Ukraine	2,2	2.0 - 2.4	10	#	#	#	#									#	#	#
129	Cameroon	2,1	1.9 - 2.3	5		#	#										#	#	#
	Iraq	2,1	1.3 - 2.8	4		#	#	#									#	#	#
	Kenya	2,1	1.9 - 2.4	7	#	#	#	#									#	#	#
	Pakistan	2,1	1.6 - 2.6	7		#	#	#									#	#	#
133	Angola	2,0	1.7 - 2.1	5		#	#										#	#	#
	Congo, Democratic Republic	2,0	1.5 - 2.2	3		#	#										#	#	#
	Cote d'Ivoire	2,0	1.7 - 2.2	5		#	#										#	#	#
	Georgia	2,0	1.6 - 2.3	7	#	#	#	#									#	#	#
	Indonesia	2,0	1.7 - 2.2	14		#	#	#	#	#	#	#	#	#	#	#	#	#	#
	Tajikistan	2,0	1.7 - 2.4	4		#	#	#									#	#	#
	Turkmenistan	2,0	1.6 - 2.3	3		#	#	#									#	#	#
140	Azerbaijan	1,9	1.8 - 2.0	7	#	#	#	#									#	#	#
	Paraguay	1,9	1.7 - 2.2	7	#	#	#	#									#	#	#
142	Chad	1,7	1.1 - 2.3	4		#	#	#									#	#	#
	Myanmar	1,7	1.5 - 2.0	4	#	#	#	#									#	#	#
144	Nigeria	1,6	1.4 - 1.8	9	#	#	#	#									#	#	#
145	Bangladesh	1,5	1.1 - 1.9	8	#	#	#	#									#	#	#
	Haiti	1,5	1.2 - 1.9	5	#	#	#	#									#	#	#

**Explanatory notes**

\*CPI Score relates to perceptions of the degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and 0 (highly corrupt).

\*\* Confidence range provides a range of possible values of the CPI score. This reflects how a country's score may vary, depending on measurement precision. Nominally, with 5 percent probability the score is above this range and with another 5 percent it is below. However, particularly when only few sources (n) are available an unbiased estimate of the mean coverage probability is lower than the nominal value of 90%.

\*\*\* Surveys used refers to the number of surveys that assessed a country's performance. 18 surveys and expert assessments were used and at least 3 were required for a country to be included in the CPI.

A "#" is given if the source mentioned in the column contributed to the assessment of a country.

**\*\*\*\* Abbreviations are:**

**BEEPS:** Business Environment and Enterprise Performance Survey

**CU:** Columbia University

**EIU:** Economist Intelligence Unit

**FH:** Freedom House, Nations in Transit

**II:** Information International

**IMD:** World Competitiveness Report of the Institute for Management Development

**MDB:** A Multinational Development Bank

**MIG:** Merchant International Group

**PERC:** Political and Economic Risk Consultancy, Hong Kong

**TI/GI:** Gallup International on behalf of Transparency International

**WEF:** Global Competitiveness Report of the World Economic Forum

**WMRC:** World Markets Research Centre

back to top

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